is in the adverse possession of another. This is considered not as passing a title but as transferring a right of action in violation of the laws against champerty. Statute 32 Henry VIII, c. 9. This was also common law in some of the states. *Browne* v. *Browne,* Fed. Cas. No. 2035 (1 Wash. C. C. 429). *Small* v. *Procter,* 15 Mass. 495. Many of the states now allow a person to convey his title as a valid deed, though there be an adverse possession. *Mustard* v. *Wohlford's Heirs,* 15 Grat. 329, 76 Am. Dec. 209; *Allen* v. *Kennedy,* 91 Mo. 324, 2 S. W. 142; *Peck* v. *Heurich,* 167 U. S. 624. By statute in quite a number of states such conveyances are permitted. Some of the states, evidently a minority, hold that such convenance by disseisee is void as to the grantee. *Pearson* v. *Adams,* 129 Ala. 157, 29 South. 977; *Godfroy* v *Disbrow,* Walk. Ch. 260; *Gilman* v. *Dolan,* 100 N. Y. Supp. 186, 114 App. Div. 774. In North Dakota it was considered a misdemeanor to convey land where grantor had not been in possession or taken rent. *Galbraith* v. *Paine,* 12 N. D. 164, 96 N. W. 258. Not having title to the land within the fence, plaintiff in the principal case could not bring ejectment. *Hammond* v. *Shepard,* 186 Ill. 235, 57 N. E. 867, 78 Am. St. Rep. 274; *Stephens* v. *Moore,* 116 Ala. 397, 22 South. 542. In ejectment plaintiff cannot rely on the weakness of the title of his adversary. *Butler* v. *Davis,* 5 Neb. 521. Unless title remained in plaintiff's grantor, defendant, being in possession, would have the better right. *McCreary* v *Jackson Lumber Co.,* 148 Ala. 247, 41 South. 822. And if the title remained in plaintiff's grantor, still plaintiff had no title, for the fence was designated as the boundary line of the tract conveyed.

CHARITIES — RELIGIOUS CORPORATIONS — TORTS — RESPONDEAT SUPERIOR. — The plaintiff, a journeyman mechanic, while engaged in making repairs on the premises of the Salvation Army, was injured by reason of the defective condition of a runway. *Held,* that defendant was not relieved from liability for negligence of its agents and servants on the theory that the rule of respondeat superior does not apply to religious or charitable corporations, *Hordern* v. *Salvation Army* (1910), — N. Y. —, 92 N. E. 626.

The decision reached in this case is in accord with that of the Supreme Court of New York in *Kellogg* v. *Church Charity Foundation* (1908), 112 N. Y. Supp. 566, 128 N. Y. App. Div. 214. See 7 MICH. L. REV., p. 270. In these cases an attempt has been made to limit the operation of the rule that a charitable corporation is not liable for injuries resulting from the negligent or tortious acts of a servant in the course of his employment, where such corporation has exercised due care in his selection. The courts of Pennsylvania, Maryland, Tennessee, Kentucky, Illinois and Missouri have held that this immunity is universal, on the ground that the funds of such corporations are trust funds and cannot be applied to any such use. In several jurisdictions, however, the reason given for the rule is that one who has accepted the benefit of a charity thereby releases the benefactor from liability for the negligence of his servant in administering the charity; *Powers* v. *Mass. Homoeopathic Hospital,* 109 Fed. 294; and where this view is taken the courts refuse to extend the immunity to cases where the injured party

is not a beneficiary. *Hewett* v. *Woman's Hospital Aid Ass'n.* (1906), 73 N. H. 556, 64 Atl. 190, 7 L. R. A. 496; *Bruce* v. *Cent. Meth. Ep. Church* (1907), 147 Mich. 230, 110 N. W. 951; *Gallon* v. *House of Good Shepherd* (1909), 158 Mich. 361, 122 N. W. 631. This is the position taken by the court in the principal case. No attempt was made in its opinion to differentiate charitable and religious corporations. The exemption of charitable corporations from liability has not been, as a rule, extended to religious corporations. *Chapin* v. *Holyoke Y. M. C. A.* (1896), 165 Mass. 280, 42 N. E. 1130; *Davis* v. *Congregational Church,* 129 Mass. 367, 37 Am. Rep. 368; *Rector etc. of Church of Ascension* v. *Burkhart,* 3 Hill, 193; *Bruce* v. *Cent. Meth. Ep. Church,* supra. Had the court distinguished these classes and taken the view that the Salvation Army is a religious rather than a charitable corporation, abundant authority might have been found to support its decision. For a full discussion of the liability of charitable corporations, see 5 MICH. L. REV., pp. 552, 662.

CONSTITUTIONAL LAW—DUE PROCESS—REGULATION OF RAILROAD.—A state railway commission ordered a railway company to construct a spur track between stations, to a private mill and furnish cars and facilities to the mill owner for loading the produce of his mill thereat for shipment. *Held,* (FULLERTON, J. dissenting) a taking of its property without due process of law. *Northern Pac. Ry. Co.* v. *Railway Commission* (1910), — Wash. —, 108 Pac. 938.

All regulation of railways is limited in its scope by the due process clause of the Constitution. *United States* v. *Delaware & Hudson Co.,* 164 Fed. 215. So that the powers of a commission must be largely decided by the "gradual process of judicial inclusion and exclusion." Railways may be required to do many things as long as they are for the use or the protection of the public. A public benefit is not a public use, and just what is a public use is a judicial question. *Healy Lumber Co.* v. *Morris,* 33 Wash. 490. For example, a railway may be compelled to fence its road. *People* v. *Illinois Cent. Ry. Co.,* 235 Ill. 374. To build depots. *Railway Commission* v. *The P. and O. Cent. Ry. Co.,* 63 Me. 269; *State* v. *The Wabash, St. L. and Pac. Ry.,* 83 Mo. 144. To build side tracks on its own right of way. *State* v. *White Oak Ry. Co.,* 65 W. Va. 15. To make connections with cross lines for the transfer of cars. *Wisconsin, M. and P. Ry.* v. *Jacobson,* 179 U. S. 287. Nebraska went further and required a railway to put in a side track to a private elevator, and in so doing to cross land not belonging to the company; but the United States Supreme Court reversed that decision, holding that the Nebraska law was unconstitutional in that it did not provide indemnity for what it required. *Missouri Pac. Ry.* v *.Farmers' Elevator Co.,* 217 U. S. 196, 30 Sup. Ct. 461. On the other side, Washington has gone further than the United States Supreme Court, in refusing to compel a railway to extend its track 250 feet to a grain warehouse though a deed of the right of way was offered to the company at the time of trial. *Northwestern Warehouse Co.* v. *O. R. and N. Ry. Co.,* 32 Wash. 218. In the principal case the court holds that to require the company to put in the said sidetrack for the private use of the mill owner was a taking without due process of law.